IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Harun Mohd. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No.645/2004
against the order dated 10-6-2004 passed
by the Additional Sessions Judge, Nimbahera,
in Criminal Revision No.2/2003.

...

Date of Order: July 07, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Vineet Jain, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioner has assailed the order dated 10-6-2004 passed by the Additional Sessions Judge, Nimbahera, district Chittorgarh (for short, "the Revisional Court" hereinafter) in Criminal Revision No.2/2003, whereby the Revisional Court dismissed the revision petition as not maintainable against the order dated 23-1-2002 passed by the Judicial Magistrate, Badi Sadri (for short, "the trial Court" hereinafter) in Criminal Case No.8/2001, whereby the trial Court confiscated the gun alleged to have been recovered from the petitioner.

I have heard learned counsel for the petitioner and perused the orders of the courts below.

The order confiscating the gun by the trial Court is final order and is appealable. The petitioner, instead of filing an appeal, filed a application under Section 452 of the Code for recovery of confiscated gun. The trial Court is not competent to review the order in view of the decision of the Hon'ble Supreme Court in Adalat Prasad Vs. Roop Lal Jindal, JT 2004 (7) 243. The said application under Section 452 of the Code came to be dismissed, against which the petitioner preferred a revision petition before the Revisional Court, which has been dismissed vide impugned order. The petitioner has challenged the legality and propriety of the impugned order by way of filing the instant criminal miscellaneous petition.

The Revisional Court did not find any error in the order of the trial Court and in my view, rightly so. Both the orders of the courts below have been challenged by way of filing the criminal miscellaneous petition under Section 482 of the Code. The order confiscating the gun is appealable. Since a remedy of appeal is available, the petition under Section 482 of the Code is not maintainable. In the circumstances, therefore, the miscellaneous petition lacks merit and liable to be dismissed.

Consequently, the criminal miscellaneous petition is dismissed. However, the petitioner is having liberty to file an

appeal challenging the order of the trial Court confiscating the gun with an application seeking condonation of delay.

(H.R. PANWAR), J.

mcs